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A.M., Appellant)	
)	
and)	Docket No. 22-0150
)	Issued: April 21, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
San Diego, CA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 8, 2021 appellant filed a timely appeal from an October 27, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 11, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On June 2, 2020 appellant, then a 58-year-old sales and service distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she injured her right shoulder due to factors of her federal employment. She explained that she had been handling packages since 1990, which

¹ 5 U.S.C. § 8101 *et seq.*

involved repetitive throwing, reaching, grabbing, pulling, and tossing.² Appellant noted that she first became aware of her condition on May 16, 2020 and realized its relation to her federal employment on May 20, 2020. She stopped work on May 22, 2020.

In a report dated May 21, 2020, Rayed F. Sahawneh, a chiropractor, noted that appellant related complaints of right shoulder pain for the past two weeks. He performed a physical examination, reviewed x-rays of her cervical spine and right shoulder, and diagnosed pain, myositis, impingement syndrome, and bicipital tendinitis of the right shoulder and segmental and somatic dysfunction of the cervical and thoracic spines.

OWCP received chiropractic excuse slips dated May 21, 26, and 28, 2020 recommending that appellant remain off work until June 2, 2020 due to right shoulder complaints.

In a June 9, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a report dated July 6, 2020, Dr. Tisha Laveta Salary, a Board-certified internist, noted that appellant related complaints of pain in the right shoulder since May 16, 2020. She performed a physical examination and noted tenderness over the right upper shoulder. Dr. Salary diagnosed right shoulder joint pain, impingement syndrome of the right shoulder, and right biceps tendinitis.

In a medical note dated July 21, 2020, Dr. Jaevan Sall, a Board-certified family medicine specialist, noted that appellant related complaints of right shoulder pain, which she attributed to repetitively tossing packages at work, including a specific incident on May 16, 2020 when she experienced immediate shooting pain in the right lateral deltoid while tossing packages. He performed a physical examination and noted tenderness to palpation in the acromioclavicular joint and subacromial space, pain with internal rotation, reduced strength due to pain, and positive Neers and Hawkins' tests. Dr. Sall performed an ultrasound of the right shoulder, which revealed a partial supraspinatus tear with fluid indicating likely inflammation. He performed a steroid injection to the subacromial space of the right shoulder and diagnosed right rotator cuff syndrome and impingement.

In a work status report dated July 21, 2021, Dr. Dennis Farid Khalili-Borna, a Board-certified family medicine specialist, recommended that appellant remain off work from July 21 through August 11, 2020 and return to work at full capacity on August 12, 2020.

In a July 22, 2020 response to OWCP's development questionnaire, appellant indicated that her job duties included receiving and distributing inbound letters and parcels to various locations and handling sales and window transactions. She also provided a copy of the employing establishment's job description for a sales and service distribution associate.

² Under OWCP File No. xxxxxx286, appellant previously filed a traumatic injury claim (Form CA-1) on March 22, 2018 alleging that on March 13, 2018 she sustained a right shoulder injury as she was throwing parcels while in the performance of duty. She also has an accepted occupational claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx338. Appellant's claims have not been administratively combined.

OWCP also received a form report dated July 27, 2020 from Dr. Khalili-Borna, which reiterated that appellant was unable to work July 21 through August 11, 2020.

In a medical report dated August 6, 2020, Dr. Sall noted that appellant's right shoulder symptoms and physical examination findings had improved. He performed another shoulder steroid injection and diagnosed rotator cuff syndrome causing impingement, which he opined was "likely due to repetitive motions from repetitive long-term work duties as a post office worker."

By decision dated September 1, 2020, OWCP denied appellant's claim, finding that the medical evidence submitted was insufficient to establish causal relationship between the accepted factors of her federal employment and her diagnosed right shoulder conditions.

On October 13, 2020 appellant requested reconsideration of the September 1, 2020 decision.

In support of her request, appellant submitted a September 11, 2020 medical report by Dr. Alexander Herrera, a Board-certified family medicine specialist, who noted that she related ongoing complaints of pain in the right shoulder, which she attributed to throwing, swinging, tossing, stuffing, and pulling packages for five hours per day while at work. Dr. Herrera performed a physical examination and diagnosed right rotator cuff syndrome and right biceps tendinitis. Dr. Salary opined that appellant's repetitive work duties were "likely the reason for the diagnosed conditions." He recommended exercises and light-duty restrictions for four weeks.

In an October 1, 2020 progress note, Dr. Herrera noted that appellant related that she had not been able to perform her shoulder exercises, because she had undergone surgery for carpal tunnel syndrome on the right wrist on September 12, 2020. He performed a physical examination and a limited diagnostic ultrasound of the right shoulder, which revealed partial tears of the rotator cuff muscles and biceps tendon. Dr. Herrera noted that appellant performed repetitive tasks at work and diagnosed nontraumatic partial right rotator cuff tear.

By decision dated January 11, 2021, OWCP denied modification of its September 1, 2020 decision.

On April 15, 2021 appellant requested reconsideration.

By decision dated April 21, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On September 17, 2021 appellant again requested reconsideration.

By decision dated October 27, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant's September 17, 2021 timely request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

In support of her request for reconsideration, appellant also did not submit any pertinent new and relevant medical evidence. The underlying issue in this case is causal relationship, which is medical in nature, and therefore, can only be addressed by submission of rationalized medical

³ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *J.V.*, Docket No. 21-0252 (issued September 23, 2021); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See J.V., id.*; *C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, *supra* note 4.

evidence from a qualified physician. Therefore, appellant is not entitled to further review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁹ *Id.*